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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

96-262

In the Matter of	)	
	)	
Assessment of Presubscribed	)	CCB/CPD Dkt. No. 98-34
Interexchange Carrier Charge	)	
On Public Pay Telephone Lines	)	

REPLY COMMENTS OF BELL ATLANTIC[1]

As the comments make clear, the Presubscribed Interexchange Carrier Charge ("PICC") on pay telephones lines is being collected from a single long distance provider for each line, just as the Commission required. No party provided any support for the unfounded speculation that local exchange carriers might be "double-dipping" by assessing more than one PICC on the same line.[2] Nor could they provide any support, since the claim is flatly wrong.

Instead, some commenters argue that pay telephone lines should be treated differently from any other line, and not have *any* PICC assessed on the presubscribed long distance carrier. As Bell Atlantic demonstrated in its initial comments, however, there is no basis for such an exclusion, which would only force others to pick up the costs associated with these lines.

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[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

[2] *See* One Call at 3 ("it does not appear that the [local exchange carriers] are assessing the PICC charge to multiple PICs on the same phone").

ARGUMENT

Some commenters argue that, at least with respect to any pay telephones provided by affiliates of local exchange carriers, the PICC should be assessed on the pay telephone provider (the end-user of the line), just as if there were no presubscribed carrier. *See* One Call at 4; AMNEX at 2; MCI at 3; APCC at 18. This proposal, however, directly contradicts the Commission's determination that the portion of costs recovered through the PICC should be assessed "not on the end-user," but on the presubscribed interexchange carrier. *Access Charge Reform*, 12 FCC Rcd 15982, ¶ 55 (1997) ("Access Reform Order").

Moreover, the policy basis for the FCC's rule remains sound. The creation of the PICC did not result in new revenues for the local exchange carriers, it was merely a reconfiguration of preexisting charges. Specifically, the Commission's access reform decision reduced the local exchange carriers' per-minute access rates, and moved recovery of a portion of those carriers' fixed interstate costs into the per-line PICC. As a result, long distance carriers that must pay the PICC are already benefiting from additional reductions in their per-minute costs that were made possible as a result of the rate restructure.

These reduced per-minute rates also benefit presubscribed interexchange carriers for pay telephones. To the extent that commenters argue that the presubscribed carrier for a pay telephone may benefit to a lesser degree insofar as customers dial around the presubscribed carrier in order to use a different long distance carrier, their argument has already been rejected. *See* Oncor at 4; AMNEX at 2; MCI at 8. In its access reform decision, the Commission expressly considered the fact that some customers might dial around the presubscribed long distance carrier, but declined to alter the structure of the PICC. Access Reform Order, ¶ 92-93.

There is no reason to alter the Commission's policy now for pay telephone lines. While they may have a larger proportion of dial around calls in some instances than other types of lines, arguments that "any correlation between a caller's chosen carrier and the IXC serving the pay telephone on a presubscribed basis would be coincidental," are mere hyperbole. Oncor at 4. In fact, a significant portion of long distance traffic is carried by the O+ or 1+ carrier.[3] Moreover, because the dial around for pay telephones is generally made through a calling card using the long distance carrier a customer is presubscribed to at home or at work or through an 800 access service provided by the largest long distance carriers, there is significant overlap between the identity of these carriers and the carriers presubscribed for pay telephones.

Finally, while MCI agrees that the PICC should be assessed on pay telephone lines, it argues that the rules currently exclude such lines where the pay telephone is owned by a local exchange carrier. MCI at 4 (citing 47 C.F.R. § 69.153). MCI is wrong. As even it acknowledges, the PICC "may be assessed on the subscriber's presubscribed interexchange carrier." 47 C.F.R. § 69.153(a). And contrary to MCI's claim, there is nothing unique about pay telephones that suggest that there is no "subscriber" or no "presubscribed" interexchange carrier.[4]

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3 So long as a single carrier has the option (either directly or through a surrogate) of offering both O+ and 1+ service, it can apportion cost recovery between those services as it chooses. *See* Bell Atlantic Comments at 5-6 (filed May 26, 1998).

4 While "subscriber" is not a term defined by the rules, it is logically the party that "subscribes" to the telephone line that is to be presubscribed. Where the local carrier owns the pay telephone, the location owner may pick the identity of the long distance carrier, but the "subscriber" is still the owner of the pay telephone.

Rather, MCI is only able to manufacture a supposed problem by equating the term "subscriber" with "end-user," and then claiming that the definition of end-user excludes local carriers that own pay telephones. In doing so, however, MCI relies on case law that has been overturned both by events and by the Court of Appeals.

First, the case relied on by MCI dealt with Commission policy prior to the deregulation of the pay telephone business that was mandated by the 1996 Act, at a time when pay telephones were still operated, and regulated as part and parcel of the carriers' local exchange service. But that no longer is true. As required by the Act, the pay telephones now are operated as a stand alone businesses (and are no longer supported by subsidies from local telephone service), and are no longer regulated as part of the carriers' local exchange service. As a result of this fundamental change, the Commission elected to treat all providers of pay telephones as end-users with respect to common line charges. *See C.F. Communications v. Michigan Bell*, 12 FCC Rcd 2134, 2142, n. 48 (1997).

Second, and independent of the changes that resulted from the Act, the D.C. Circuit has rejected the very distinction between independent and local carrier owned pay telephones that MCI claims is still the law. *C.F. Communications v. FCC*, 128 F.3d 735 (1997). As a result, MCI's reliance on the technical definition of end-user in section 69.2 of the rules (which may or may not support its claims) would have the Commission "put on blinders" and ignore that "the definition had been adopted in a different context." *Id.* The Commission applied the PICC to all regulated lines, and MCI's arguments do not create an exception.

Conclusion

The Commission should allow carriers to continue to assess the PICC on the presubscribed long distance carrier for pay telephones, just as they do for all other lines.

Respectfully submitted,

Edward Shakin

1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4864

Attorney for the
Bell Atlantic telephone companies

Edward D. Young, III
Michael E. Glover
Of Counsel

June 2, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June, 1998 a copy of the foregoing "Reply Comments of Bell Atlantic" was served on the parties on the attached list.

Jennifer L. Hoh

Jennifer L. Hoh

Chief*
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, DC 20554

ITS, Inc.*
1919 M Street, NW
Room 246
Washington, DC 20554